

REMARKS

This paper responds to the most recent Office action, which was non-final. The Examiner has suggested proposed language that would place the claims in condition for allowance. The Examiner is thanked for this proposal, which is discussed below (in the context of new dependent claims 52-53).

There is one housekeeping issue. The PTOL-326 Form that accompanied the most recent Office action lists the rejected claims as “1-29, 40-51.” The claims pending at the time were actually 1-29, 42-45 and 47-49. The listing on Form 326 appears to be a typographical error, but the undersigned wanted to bring it to the Examiner’s attention.

The “Allowable Subject Matter” is noted and appreciated. Because the undersigned was not entirely sure about the Examiner’s proposed language, new dependent claims 52-53 have been presented for the Examiner’s consideration. These claims include wording similar to that proposed by the Examiner, namely the phrase indicating that the method “examines an entirety of an application layer without any application-specific limits.” The Examiner is requested to indicate whether this proposal formulation would be acceptable, and the Examiner is thanked in advance for his consideration.

Claims 1-29, 40-45 and 47-49 are rejected under 35 USC §102(a) as being anticipated by the admitted prior art (APA). With respect, this rejection again is traversed.

The Applicant is not merely claiming “application layer” monitoring or detection as the Examiner suggests throughout the most recent Office action. In this regard, the Examiner is reminded that the phrases in question are as follows: “detecting an application layer information access anomaly by using a semantic analysis to detect a given deviation from [a] prototypical model” (in claim 1) and “performing a semantic analysis against the prototypical model to identify an application level information access anomaly” (in claim 49). Patentability should be examined with respect to the claims as worded, and the “application layer” phrase does not stand alone; here, the “context” matters, and there are specific additional limitations (underscored above) that are the actual claimed subject matter.

To be clear, Applicant has submitted claims that are believed to be patentable over the prior art. The prior art set forth in the written description might well be deemed “admitted prior art” but what matters here is whether the admitted prior art “reads on” the claimed invention, which it does not. Applicant is not seeking to patent the alleged APA, and (at the very least) the following subject matter is not APA:

Claim 1:

“deriving a prototypical model that includes a frequency view of a set of content signatures accessed by a given user, where the set of content signatures are indicative of content that is changing over time; and

“detecting an application layer information access anomaly by using a semantic analysis to detect a given deviation from the prototypical model.”

Claim 49:

“monitoring data packets indicative of changing content over time;

generating a prototypical model; and

performing a semantic analysis against the prototypical model to identify an application level information access anomaly.”

To establish anticipation, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001)

“Absence from the reference of any claimed element negates anticipation.” *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed.Cir.1986).

Here, and with respect, the Examiner has not shown how either claim 1 or claim 49 is anticipated.

Further, the Applicant has not admitted that the subject matter of the dependent claims is admitted prior art.

With respect, the Examiner also is reminded that the Applicant does not bear any burden to show that the claims are not anticipated; that is and remains the Office’s obligation in the first instance.

Reconsideration is requested.

A request for telephone interview accompanies this paper.

No additional claim fees are believed due; however, if fees are due, please charge Deposit Account No. 50-4001 in the undersigned's name.

Respectfully submitted,

/David H. Judson/

By:

David H. Judson, Reg. No. 30,467

ATTORNEYS FOR APPLICANT

August 21, 2010